REMARKS

Claims 1-52 are pending in the present application and were rejected on various grounds in the Office Action mailed on August 13, 2007. Applicant appealed and the rejections were upheld by the Board in a Decision mailed on March 23, 2010 and a Decision on Request for Rehearing mailed on August 11, 2010.

By this paper, Claims 1, 6, 9 and 11 are amended. Claims 53-56 are new. Support for the amendments and new claims can be found at least at paragraphs [0088] – [0180]. No new matter has been added by these amendments. Accordingly, Claims 1-52 remain pending in this application.

Discussion of the Rejections Under 35 U.S.C. § 101

Claims 6-10, 20-42 and 49-51 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory matter. The Examiner states that Claims 6 and 9 "lack the necessary physical articles or objects to constitute a machine or manufacture within the meaning of U.S.C. § 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se.*" *Office action* at page 4. The Examiner states that Claims 7-8, 10, 20-42, and 49-51 (claims dependent on either Claim 6 or Claim 9) are likewise rejected.

Applicant has amended Claim 6 and similarly Claim 9 to recite ". . .an object being an encapsulated combination of data and processes that manipulate the data. . . wherein the system is operable on a computing environment."

Applicant respectfully submits that Claims 6 and 9 encompass a "computer-based medical diagnostic system" that "outputs a diagnosis of a patient." Appellant respectfully submits that this computer-implemented system constitutes a "machine" producing a useful, tangible, and concrete result under 35 U.S.C. § 101. Accordingly, the invention of Claim 6 constitutes protectable subject matter under 35 U.S.C. §101.

In view of the foregoing, Appellant respectfully requests reconsideration and withdrawal of the rejection of Claims 6-10, 20-42, and 49-51.

Discussion of Claim Rejections Under 35 U.S.C. § 102

Claims 6-9, 20-27, 29-38, 40-42 and 49-51 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,868,669 to Iliff (hereinafter "Iliff"). Applicant respectfully disagrees.

Patentability of Independent Claims 6 and 9

Independent Claims 6 and 9 stand rejected in view of Iliff. Applicant respectfully submits that Claims 6 and 9 are patentable over Iliff.

Amended Claim 6 recites:

> An object based automated computer-implemented diagnostic system comprising:
> a plurality of objects which interact to determine a diagnosis of a patient, an object being an encapsulated combination of data and processes that manipulate the data, wherein the objects includes at least two diagnostic objects comprising:
> a disease object processing data indicative of an abnormal health state or disease, a symptom object processing data indicative of a patient sign, complaint, finding, or test result, a valuator object processing data indicative of a value of the symptom of the patient, a question object processing data indicative of questions to ask the patient specific to a specific symptom of the patient, a node object processing data indicative of a single well-defined question to the patient, and a candidates object processing data indicative of candidate diseases for diagnosis of the patient, wherein the objects are arranged in a hierarchical relationship such that the result of one of the objects is input to another of the objects; and
> at least one of the diagnostic objects directly invokes another of the diagnostic objects in a computer-based medical diagnostic system so as to output a diagnosis of a patient based on the prior object invocation,
> wherein the system is operable on a computing environment

Applicant respectfully submits that Iliff '669 does not teach every element of independent Claim 6. The Examiner states that Iliff '669 teaches an object-based automated computer implemented diagnostic symptom that discloses the features of Claim 6, recited above. Claim 6 has been amended to specifically recite clarification as to the meaning of the term "object" and recite language from the specification which describes the functionality for each of the specific objects, "a disease object processing data indicative of an abnormal health state or disease, a symptom object processing data indicative of a patient sign, complaint, finding, or test result, a valuator object processing data indicative of a value of the symptom of the patient, a question

object processing data indicative of questions to ask the patient specific to a specific symptom of the patient, a node object processing data indicative of a single well-defined question to the patient, and a candidates object processing data indicative of candidate diseases for diagnosis of the patient, wherein the objects are arranged in a hierarchical relationship such that the result of one of the objects is input to another of the objects."

There is no teaching or suggestion of these types of objects in Iliff '669. The Examiner states at page 5 of the Office Action, that "the MDATA system is written in object-oriented program language. . . therefore teaching object." Applicant respectfully disagrees. Programming in C++ is not the same thing as specifying the diagnostic objects. Claim 6 now recites clarification for the term "object." Further, as set forth above, Claim 6, for each of the diagnostic objects, recites language which describes the functionality for each of the specific objects.

Further, there is no discussion in Iliff '669 of diagnostic objects where at least one of the diagnostic objects directly invokes or calls upon another of the diagnostic objects. The Examiner cites to a passage in Iliff '669 as allegedly disclosing this feature, that a "migraine object directly invokes related migraine symptom/questions objects." However, the reference does not actually disclose this, or anything about a migraine object invoking another object. In reality, the cited section of the reference says: "The MDATA system 100 is knowledgeable about the difference between classic, common, and all other variants of migraine, but for this discussion the general term "migraine" will be used. After reordering the first list and placing migraine at the top, the MDATA system 100 then asks several questions related specifically to migraine headaches. These are called the 'migraine screening questions'." *Iliff* at col. 39, ll. 61-67.

As shown in the cited portion of the reference, there are no symptom objects or question objects (where objects are defined by Applicant's claims and the specification as previously discussed above). Thus, the cited passage does not support the rejection.

Accordingly, the Iliff reference fails to disclose, either expressly or inherently, each and every element as set forth in independent Claims 6. As Claim 9 recites similar features, Applicant respectfully submits that Claim 9 is patentable for at least the same reasons as Claim 6, as stated above. Therefore, Iliff cannot anticipate independent Claims 6 and 9. Appellant respectfully requests withdrawal of the §102(b) rejection and allowance of Claim 6 and Claim 9.

Discussion of Claim Rejections Under 35 U.S.C. § 103

Claims 1, 3-5, 10-13, 15-19, 43-48, and 52 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,868,669 to Iliff (hereinafter "Iliff") in view of U.S. Patent No. 6,149,585 to Gray (hereinafter "Gray").

Patentability of Independent Claims 1 and 11

The Examiner rejected Claims 1 and 11 over Iliff in view of Gray. The Examiner again relies on the MDATA system of Iliff as disclosing "a plurality of disease objects, each disease object associated with a plurality of symptom objects. _Office action_ at 10. As set forth above, Iliff does not teach "disease objects, each disease object processing data indicative of an abnormal health state or disease and each disease object associated with a plurality of symptom objects, each symptom object processing data indicative of a patient sign, complaint, finding or test result." Also set forth above, Iliff '669 fails to disclose an object, such that "each object comprises an encapsulated combination of data and processes that manipulate the data." Gray does not teach or suggest these features of Claims 1 and 11 and therefore does not cure the deficiencies of Iliff. Therefore, Iliff and Gray, alone or in combination, do not disclose all of the features of Claims 1 and 11.

Discussion of Patentability of Dependent Claims

Applicant does not necessarily agree with the characterization and assessments of the dependent claims made by the Examiner, and Applicant respectfully believes that each claim is patentable on its own merits. The dependent claims are dependent either directly or indirectly on one of the above-discussed independent claims. Accordingly, Applicant respectfully submits that pursuant to 35 U.S.C. § 112, ¶4, the dependent claims incorporate all the limitations of the claim to which they refer and include their own patentable features, and are therefore in condition for allowance. Therefore, Applicant respectfully requests the withdrawal of these claim rejections and prompt allowance of the claims.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: September 29, 2010   By:_____

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